

Without adoption of the pending amendment, that balance could be fundamentally altered.

Mr. President, let me stress again the issue here is not about whether you support or oppose the balanced budget amendment. It is about whether you believe that the President should have the power to impound funds or raise taxes on the American people at his or her sole discretion.

The concentration of this type of power in the hands of the executive is not something that I believe the people of this country want to see happen. They want to see their elected officials use some fiscal discipline and restraint to bring our Federal budget into balance. They want us to stop deficit spending and increasing the national debt—a debt that will be passed on to their children and grandchildren.

I do not believe that these concerns about fiscal responsibility means that the American people want to see the emergence of an imperial Presidency.

I do not believe that they want this President or the next to have the power to unilaterally impound funds or raise taxes.

If the proponents of the amendment truly believe that the amendment does not bestow those powers on the President, then they ought to be willing to accept this amendment.

Their resistance gives this Senator a great deal of concern, particularly in light of the strong legal arguments that have been presented indicating that the proposed balanced budget amendment could well be construed by the courts and the executive branch to bestow on the President extraordinary powers to impound funds or raise taxes in the event that the constitutionally mandated budget balanced has not been achieved.

Mr. President, this is not a risk that we should expose ourselves to when a simple solution—adoption of the pending amendment—will resolve the question.

A number of legal scholars have concluded that without such an amendment to the balanced budget amendment, the President would have such powers to enforce the constitutional mandate of a balanced budget. Their arguments, which I will summarize briefly, make a good deal of sense and we ought to heed their warnings.

These scholars note that the balanced budget amendment which the Senate is now considering is silent on the issue of how it will be enforced.

The amendment itself provides simply that total outlays cannot exceed total receipts in a fiscal year, unless each House of Congress approves a specific deficit by a three-fifths vote. The amendment, however, does not specify what action can be taken if an unconstitutional deficit arises, either because of the inaction of the legislative and executive branches, or because of unforeseen changes in economic factors.

At the same time, proponents argue that the balanced budget amendment is

self-enforcing. The Judiciary Committee report states, "both the President and Members of Congress swear an oath to uphold the Constitution, including any amendments thereto."

As to how the President is expected to carry out that responsibility, particularly in the case of a recalcitrant Congress, the committee report simply states that it is not their intent to grant the President any impoundment authority, and that, in any event, Congress has the power under section 6 of the amendment to pass legislation that specifically denies impoundment powers to the President.

The implication of these passages in the committee report is clearly that the proponents of the amendment recognize the very real risk that the proposed amendment opens the door to a President acting to impound funds or raise taxes to meet the constitutional mandate of a balanced budget and that they hope that Congress will proscribe that authority in implementing legislation.

That is a thin argument upon which to rest such a profound issue as maintaining the constitutional balance of powers.

If Congress failed to pass legislation to preclude a President from taking unilateral action to bring a budget into balance by either impounding funds or raising taxes or Congress passed such legislation, but a President vetoed it and his or her veto was not overridden, there is every reason to believe that such authority would be there for a strong executive to take under the guise of carrying out his or her constitutional obligations.

Indeed, a President might well feel compelled to veto such legislation for the very reason that it would tie his or her hands in seeking to comply with the constitutional mandate to prevent outlays from exceeding revenues in any given fiscal year.

The Constitution, article II, section 3, obligates the President of the United States to "take care that the Laws be faithfully executed." A commonsense reading of the proposed balanced budget amendment and the obligation of the President to faithfully execute the law means that the President must act to either impound funds or raise taxes if the total outlays of the Federal Government exceed the total revenues in any fiscal year.

A broad range of respected legal scholars have reached that conclusion.

Assistant Attorney General Walter Dellinger testified before the Judiciary Committee that the proposed constitutional amendment would authorize the President to impound funds to insure that the outlays did not exceed revenues.

Harvard University law professor Charles Fried, who served as Solicitor General during the Reagan administration, testified that section 1 of the proposed amendment "would offer a President ample warrant to impound appropriated funds" in a year when actual

revenues fell below projects and a bigger than authorized deficit occurred.

Other legal scholars who have reached similar conclusions include former Attorney General Nicholas de B. Katzenbach, Stanford University Law School Professor Kathleen Sullivan, Yale University Law School Professor Burke Marshall, and Harvard University Law School Professor Laurence Tribe.

Mr. President, I think it is important to stress that we are not talking here about the President exercising something along the lines of a line-item veto. Legislation which would give the President line-item veto authority to remove spending items from appropriation bills and provide Congress the opportunity to override those vetoes has passed the other body and will soon be debated in the Senate. The Judiciary Committee has also already held hearings last month on proposed constitutional amendments to provide the President with line-item veto authority.

What we are talking about here, however, is not a line-item veto, but the power of the President to take whatever steps he or she deems necessary, including impounding funds and raising taxes without any review by Congress in order to meet the constitutional mandate of a balanced budget. That is a very different process from a line-item veto authority and one which would vest the executive branch with unprecedented fiscal powers.

Mr. President, although much of the discussion regarding the Presidential powers to faithfully execute the requirements of a balanced budget amendment have focused upon the issue of impoundment authority, there is no reason to conclude that a President would not have equal powers to achieve a balanced budget by unilaterally raising taxes, duties or fees in order to generate the revenues needed to avoid an unconstitutional deficit. That is certainly not a result most proponents of the balanced budget amendment would like to see happen. The only sure way to prevent it is to adopt the pending amendment which would foreclose that option.

Mr. President, the best way to ensure that the balanced budget amendment is not interpreted to give Presidents the power to unilaterally impound social security checks or raise taxes on middle class workers is simple—put it in writing.

Adoption of this amendment will make it clear that the balanced budget amendment does not, in fact, authorize the President to exercise this kind of unprecedented power. Those who oppose this amendment have given no good reason why they are not willing to accept this amendment.

They ask that the American people accept, on good faith, that they "do not intend" to give the President these powers. The American people should